

No. 14/13/87-Lab./843.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1942 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court-I, Faridabad in respect of the disputes between the workman and the management of M/s Chief Administrator, Faridabad Complex Admn. Faridabad *versus* Sher Mohammad.

BEFORE SHRI N. L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Reference No. 259 of 92.

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI SHER MOHAMMAD S/O SHRI SAZAD, VILLAGE PALI, TEHSIL BALLABGARH
DISTRICT FARIDABAD

.. Claimant.

and

M/S CHIEF ADMINISTRATOR, FARIDABAD COMPLEX ADMINISTRATION,
FARIDABAD.

.. Respondent.

Present:—

Shri S. K. Bakshi, Authorised representative for the workman.

Management *Ex parte*.

AWARD

Under the provisions of section 10(1)(c) of Industrial Disputes Act, 1947, the Government of Haryana have,—*vide* Endorsement No. ID/FD/57351—56, dated 23rd December, 1992 referred the following dispute between the parties above mentioned for adjudication:—

“Whether the termination of services of Shri Sher Mohammed is legal and justified. If not, to what relief he is entitled?”

2. The case of the workman is that he was appointed as a Beldar with effect from 13th July, 1991 on payment of monthly wages of Rs. 971 and was directed to work in Dabua Colony. Thereafter in the month of April, 1992 he was directed to work at Tikona Park Boosting Water Supply. The allegation of the claimant is that he had served the management continuously for more than 240 days but to his surprise his services were terminated in April, 1992 without any notice written order and without paying him compensation under Section 25-F of I. D. Act. It has also been alleged by the workman that during the course of his employment, he was directed to sign some times on the muster rolls and some times wages were paid to him different names. It is on these facts that the workman has claimed his reinstatement with continuity of services and payment of full back wages.

3. The defence taken by the management is that the workman was taken in service in Dabua Colony on 1st November, 1991 instead of 18th July, 1991 as alleged and that the workman had stopped coming to work after 31st March, 1992. It has been denied that the workman was directed to work at Tikona Park. Further contention of the management is that the workman had put in service for 124 days only. So, according to the management the services of the workman were never terminated, rather he had himself abandoned his job and, therefore, no violation of any of the provisions of Industrial Disputes Act, had been made. It has been denied that the workman was asked some times to sign and some times to put his thumb impressions on the muster rolls. It has also been denied that the wages were paid to the workman some times in different names.

4. The workman filed rejoinder on 6th June, 1994 reiterating therein the pleas taken in the claim statement. On that day, however, no one had put in appearance from the side of the management with the result that it was proceeded *ex parte* and the workman was called upon to lead *ex parte* evidence.

5. In his examination as WW-1, the workman stated that he was appointed on 18th July, 1991 and continued working in Dabua Colony and thereafter in April, 1992 he was directed to work

in Tikona Park. The workman stated further that on 28th August, 1992, his services were terminated without any reason and without paying him any compensation although he had completed service of more than 240 days.

6. The management has chosen to withdraw from the proceedings. Therefore, pleas taken in claim petition stand proved from the unrebutted testimony of workman examined as WW-1. No proof, what-so-ever has been brought in record that the workman had put in service for 124 days only and that had himself stopped attending to his duties after 31st March, 1992. Therefore, holding that the termination of services of the workman Sher Mohammad is neither justified nor legal, he is ordered to be reinstated with continuity of service and payment of full back wages. An *ex parte* award is passed accordingly.

N. L. PRUTHI,

The 24th October, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour
Court-I, Faridabad.

Enforcement No. 3739, dated 26th October, 1994

A copy with three spare copies, is forwarded to the Commissioner and Secretary to Govt., Haryana, Labour Department Chandigarh.

N. L. PRUTHI

Presiding Officer,
Industrial Tribunal-cum-Labour
Court-I, Faridabad.

No. 14/13/87-6 Lab./848.—In pursuance of the provisions of section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Secretary, HSEB, Chandigarh *versus* Sukhdev Singh.

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE). PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 317 of 88.

between

SHRI SUKHDEV SINGH SON OF SHRI MANSA SINGH, 5/678, GURU ARJUN
NAGAR, NEAR LAL DAWARA CHUNGI, JAGADHRI

.. Workman

and

(1) SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH
(2) EXECUTIVE ENGINEER, HARYANA STATE ELECTRICITY BOARD (OPERATION
DIVISION) YAMUNA NAGAR.

.. Management

Present :

WR, Shri Jagbir Singh.

MR, Shri D. R. Batra.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Sukhdev Singh and the management (1) Secretary, Haryana State Electricity Board, Chandigarh (2) Executive Engineer, Haryana State Electricity Board, (Operation Division) Yamuna Nagar to this court for adjudication,—*vide* Haryana Government gazette notification bearing No. 35017—22, dated 27th July, 1988 :—

“Whether the termination of the services of Shri Sukhdev Singh is valid and justified ? If not so, to what relief is he entitled ?”

The workman raised an Industrial dispute by serving a demand notice dated 7th April, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and filed his claim statement dated 19th September, 1988 in which he alleged that he was appointed as daily wages worker by the management on 1st June, 1980 and his services were illegally terminated on 10th May, 1984 in violation of mandatory provisions of section 25-F and 25-G of the Act. It was alleged that many juniors were retained and many new persons were recruited. The workman, therefore, demanded his reinstatement with continuity of service and back wages.

The management in the return filed a pleaded that dispute having been raised after a period of four years is barred on account of delay and laches. Moreover the workman agitated the matter before the High Court in writ jurisdiction which was dismissed upto Supreme Court of India. He also filed civil suit and the same was dismissed and the workman was relieved on 15th June, 1984 after the vacation of stay by Sub-Judge Jagadhri. On merits it was pleaded that the workman was retrenched w.e.f. 10th May, 1984 after serving him with one month notice dated 9th April, 1984 and a sum of Rs. 675 was sent to him through money order being retrenchment compensation which he refused to accept and the same is still lying unpaid. Other allegations were denied.

The workman in his replication filed controverted the allegations of the management in the written statement filed and reiterated those made in the claim statement. On the rival contentions of the parties the following points in issues were laid down for decision :—

1. Whether the impugned termination of services of the workman is invalid ? OPW
2. Whether the reference is bad due to delay and laches ? OPR
3. Whether the reference is not competent as alleged in preliminary objection No. 1 & 2 of the W. S. ? OPR.
4. Relief.

Parties led evidence. I have heard the representatives of the parties. My findings are as under :—

Issue No. 1:

Although the workman in his statement on oath has stated that he was retrenched on 10th May, 1984 without any notice or payment of retrenchment compensation, yet during cross-examination he admitted that he did not receive the retrenchment compensation from the office of S.D.O. as per directions given in the notice. On the other hand the management has produced MW-1. Shri S. P. Gupta, J. E. who stated that the workman was retrenched on account of shortage of material and paucity of work after serving notice Ex. M-1. This witness also stated that,—vide Ex. M-1/1 the workman had received the retrenchment notice. He also stated that the information of the retrenchment notice was given to the Government,—vide Ex. M-2. He then stated that the workman did not collect the retrenchment compensation as per directions given in the retrenchment notice which was sent to him through money order Ex. M-3. The management also examined MW-2 Shri J. P. Goyal, Executive Engineer, Hydel Project, Yamuna Nagar who also proved retrenchment notice Ex. M-1 and information sent to the Government Ex. M-2. He stated that the services of the retrenchment notice was affected on the workman by him and that had asked the workman to collect his retrenchment compensation. He also stated that retrenchment was affected as per seniority list Ex. M-2/1. He then stated that later on retrenchment compensation was sent to the workman through money order Ex. M-3 because he did not collect the same from the office of S. D. O. This witness also produced Ex. M-2/2 copy of order of Hon'ble Supreme Court dated 11th February, 1985,—vide which the Special Leave Petition of the

workman was dismissed. Ex. M-2/3 is the copy of order dated 31st May, 1984 of Additional Senior Sub-Judge, Jagadhri in which the workman gave an undertaking that in case their stay application is rejected they will not claim the pay for the period after the date of the expiry of the notice of retrenchment. Ex. M-2/4 is the copy of order dated 15th June, 1984,--vide which the stay application moved by the applicant was dismissed. Ex. MW-2/5 is the copy of the plaint civil suit filed. Ex. MW-2/6 is the copy of the notice issued in the said case. MW-2 lastly stated that the workman did not come to collect the retrenchment compensation. During cross-examination he maintained that amount of retrenchment compensation was lying in cash with the cashier. It was held in Ramesh Hydromachs and Labour Court, Hubli and another 1985-LIT 1806 that keeping the amount ready in the office of the employer is sufficient compliance. Similarly it was held by the Hon'ble Supreme Court in Delhi Transport Undertaking and Industrial Tribunal, Delhi and another 1965-(I)LIC 450 that proviso to section 33(2)(b) of the Act does not mean that the wages should have actually paid because in many cases the employer could only tender the amount before the dismissal but could not force the employee before the dismissal becomes effective. In the instant case the tender was definitely made before the order of retrenchment became effective. No defect whatsoever has been pointed out by the workman in the retrenchment notice. No name of the junior has been disclosed by the workman in his statement by the court nor any junior has been produced. It was for him to prove this factum. It is argued on behalf of the workman that the management is an industrial establishment and three months notice was required to be issued to the workman as well to the Government but the same was not done and therefore the retrenchment is bad. There is however no such pleading in the demand notice. It is not proved on the file that the management is an industrial establishment. Moreover there were only 114 workers working with the management as would in deed become clear from Ex. MW2-/1 the seniority list and retrenchment was affected of the last 30 persons in this seniority list. The workman unsuccessfully agitated the matter upto the Supreme Court. He has failed to prove this issue and the finding on this issue is therefore, returned against the workman and in favour of the management.

Issue No. 2:

The retrenchment was affected on 10th May, 1984. The demand notice was served in the present case on 7th April, 1988. It was held in Pair Lal, petitioner versus Haryana State Electricity Board 1993 - (I) SCT-104 that delay can be fatal to a claim under section 10 of the Act even if it is held that the termination is bad in law. It was further ruled that the general law providing three years limitation is equally applicable to the workman. In the present case the dispute having been raised after a period of four years is bad due to delay and laches. The findings on this issue is, therefore, returned against the workman and in favour of the management.

Issue No. 3:

The onus to prove on this issue was on the management. The management has however failed to prove to this issue. The finding on this issue, shall, therefore stand returned against the management and in favour of the workman.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

The 7th October, 1994.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1666, Ambala City dated the 17th October, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act. 1947.

S. R. BANSAL,

Additional District and Sessions Judge,
Presiding Officer, Labour Court, Ambala.